THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20307 OF 2005

DATED:15.9.2005

Between:

Pedabaliyarasimhuni Srinivas,

…Petitioner

And

The Election Officer and Commissioner,

Salur Municipality, Salur,

Vizianagaram District and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20307 OF 2005

ORDER:

The petitioner is resident of Salur town in Vizianagaram District. On the eve of municipal elections 2005 he filed his nomination for ward No.1 of Salur Municipality. After scrutiny on 6.9.2005 his nomination was rejected on the ground that the declaration in form-2 is incomplete and not attested and that the petitioner did not submit caste certificate though he is claiming to be Scheduled Tribe. The decision was communicated by the impugned letter dt.6.9.2005 which is assailed in the Writ Petition.

Learned counsel for the petitioner, Sri M.Vidya Sagar, strenuously contends that when no objection was raised at the time of scrutiny regarding community status of the petitioner, it was improper on the part of the Election Officer, first respondent herein, to reject the nomination. The learned Standing Counsel for the respondent Municipality opposed the Writ Petition submitting that the Writ Petition is not maintainable.

By reason of Article 243-ZG any dispute in relation to an election to a municipality is not amenable to writ jurisdiction at the stage of elections, especially after publication of election notification. Improper rejection or improper acceptance of nomination is a ground for challenging election under Rule 10(c) of the Rules for Decision of Election Disputes, 1967 (the Rules) made by the Government. In **V.Narayana v. Election Officer, Alwal Municipality** (**Narayana**, for brevity), this Court has held that when a nomination is rejected, a writ petition would not lie. It was held therein that challenge to election means and includes a challenge to any intermediary stage in the election and that when the nomination is rejected or accepted improperly, the same has to be agitated by way of Election Petition. The decision in **Narayana** was followed by two Full Benches of this Court in **A.P.Sarpanchas Association v Govt. of A.P.** and **G.Kanaka Durga v State Election Commissioner**. Further in **C.Subrahmanyam v K.Ramanjaneyulu**, the Supreme Court held that even if the election is challenged on the ground of non-compliance of the provisions of the A.P. Panchayat Raj Act, 1994 or Conduct of Election Rules, 1961, the writ petition would not be maintainable and it is only by way of Election Petition that such thing can be challenged. In view of the settled position, this writ petition is not maintainable.

However, it shall be open to the petitioner to file Election Petition before appropriate Tribunal after declaration of results, in which event, the said Tribunal shall dispose of the Election Petition within six months after issuing notice to the contesting respondents therein.

The writ petition, with the above observations and directions, is dismissed. No costs.

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(V.V.S.RAO, J)

15.9.2005

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